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UNARMED NEUTRALITY

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The administration at Washington in its policy of neutrality is navigating a foggy sea strewn with rocks, along coasts where the lighthouses have been put out and the buoys changed into floating mines. President Wilson is still manfully trying to use the regular charts of treaties and international law; and insists upon sailing the good old compass courses. In a world full of roarings and vaporings, the United States is the one great power in the world which continues to base its policy upon permanent lines of good will. Even Italy and China, the only other populous nations of the earth which have not been drawn into the war, find their neutrality strained to the utmost by the demands of neighboring powers. Every belligerent has set up some new and strange doctrines of its own in international affairs, put forward in the hope to realize some small and temporary advantage over its military adversaries. While it is not true that international law has for the time being gone into "innocuous desuetude," it is true that the three powers with which we come closest into touch—Great Britain, Germany and France—all make use of what we might call an eclectic international law, choosing the principles that suit them, and filling in the gaps with new ideas of their own.

Confusion Worse Confounded

One reason for the present confusion on this subject is that too much stress has been laid upon documentary international law, such as Hague Conferences, Declarations of London, treaties, and the generalizations of the text writers; and too little attention has been paid to the fundamental reasons why there should be neutrals, neutral rights and neutral trade. Hence an international mix-up. Germany notifies the world that the seizure of provision ships and cargoes is so contrary to all principles of international law, that it justifies the sinking of American merchantmen bound to English ports, without even the opportunity for the crew to escape. Then

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in the *Frye* case, the Germans insist that the capture of the cargo of the *Frye* was justified because it was consigned "for orders" to Liverpool, which is a fortified port; and the German presumption was that it was intended for the British government. Germany then turns round and politely promises reparation for the destruction of the vessel because of a treaty of 1828 between Prussia and the United States to which the United States had not alluded. This treaty, by the way, like the Belgian neutrality treaties of 1831 and 1839, was made by Prussia but is recognized as valid by the Empire of Germany; while many German writers have insisted that the Belgian treaties ceased to have binding force when Prussia and other states joined in a federal union.

England is equally illogical. In 1908 that power asked that the question of maritime law in time of war be left out of the Hague discussions, in order that they might be treated in a separate conference in London. The resulting Declaration of London of 1911 was satisfactory to Great Britain and was signed by her representatives, but appears to have been held up by a technicality in the House of Lords. Nevertheless when the present war breaks out, Great Britain announces that she will stand by the Declaration of London; then modifies the list of contraband in that Declaration; again alters that list to the extent of including rubber as contraband, which by the Declaration is declared to be under no circumstances contraband; then throws the whole theory of contraband to the winds by claiming the right to capture any vessel bound to enemy's ports, or cargoes ultimately destined to enemy's territory. This is not so much a "scrap of paper" as a scrap heap of papers.

Disturbed Neutrality

The only way out of this mix-up is for the United States to insist, yesterday, today, and every day to the end of the war, that whatever mean or brutal thing the belligerents may do to each other, the United States stands unmoved upon its right to be a neutral and to act as a neutral. From that safe and sane position, steady efforts have been made to drive the United States. Both continental Eurus and insular Boreas have blown with all their might to deflect the United States from its steady middle course. Englishmen write with grief and disappointment of the unwilling-

ness of the United States to realize that the Allies are fighting the battles of America; and that we ought to come to their aid by land and sea. Their treatment of our neutral ships, however, is not prepossessing. It gives some color for the German charge that the purpose of Great Britain is to get control of all the seas and make the laws of trade for other nations. On the other side, the Germans, officially, unofficially and German-Americanally insist that the United States has made itself one of the allies by furnishing munitions to the enemies of Germany. We are told that the blood of German soldiers killed by shrapnel manufactured in America will cry out against us. Just what would be the legal status of the blood of British soldiers who were killed for the lack of our shrapnel does not distinctly appear! Nor is it plain how to classify the blood of the Servians, killed by German shrapnel fired from Turkish guns in 1912, and from Bulgarian guns in 1913.

Nevertheless, nothing is clearer than that there is a steady accumulation of anger and hostile feeling toward the United States. The English are not altogether displeased that the United States should remain neutral, because they are getting the goods. The United States shows no moral objection to furnishing superior shrapnel to shed the blood of soldiers in any uniform. The English have driven all but one of the German commerce destroyers off the seas; they are feeding and supplying themselves, notwithstanding the German submarine campaign; and they are receiving supplies of food and ammunition from the United States in any desired quantity. It is true that they have accomplished this by their superior naval power, combined with a sublime indifference to their own principles of neutral trade.

The Germans, however, are in a very different case. Quite contrary to their expectations and to the probabilities as shown by the experience of the Southern Confederacy in our Civil War, they have been unable seriously to damage British merchant commerce. Great Britain is relentlessly uprooting neutral commerce, which means substantially the American commerce with Germany and her allies. The English have hoped to starve out the Germans, exactly as the Germans have hoped by battleships, aircraft or submarines, to starve out the British Islands. The consequent frame of mind among thoughtful Germans seems to be not unlike that of thoughtful Northerners during our Civil War. We felt

a sense of passionate resentment against the British people because they were akin to us in civilization, and were supposed to be a lofty and high-minded people who should sympathize with the aspirations of a great nation. The Americans insisted that the British government was bound to take precautions against commerce destroyers, such as it had never taken before. The United States rolled up, and once actually presented, a bill for a thousand million dollars for the prolongation of the war. That fierce feeling, which we now see to be not wholly reasonable, lasted for thirty-five years. It was extinguished only by an apology from Great Britain followed by a so-called arbitration in which Great Britain accepted a hand upon which she must inevitably lose the game. Fifteen and a half million dollars for the Alabama Claims were paid in cash. Still it was not till the Spanish War of 1898 that John Bull again beciame the favorite cousin.

It looks now as though there would be a similar experence between Germany and the United States. From the first week of the war to the present time the point of view of the most intelligent German subjects in the United States has been that they were unwarrantably deprived of the natural sympathy of the American people. What they expect of the United States government is what we expected of the British government—not a cold impartiality but a decided leaning in their favor. Without insisting on a direct violation of neutrality as a mark of friendship, the Germans have expected that the United States would go to the extreme in their behalf. They would like a prohibition of export of military munition, or, failing that, an embargo like that of 1807 which cut off all exports. They want the American newspapers, universities and chambers of commerce to think that the Germans are in the right; and they feel that a failure so to think must have a malevolent motive. This is a serious state of things for America—one of the most troublesome results of the war; and it is likely to leave behind it a legacy of international irritation.

Neutral Obligations

Nevertheless it is impossible for the United States to avoid this distressing state of things. First because it is not only a bad moral policy to rob Peter in order to pay Paul, but because Paul is likely

to make himself heard on the subject in the future. Still more because it is not the duty of the people of the United States to give either physical or moral support to either side. The woe of Belgium has led the Americans to join in one of the most magnificent outbursts of practical charity ever known to mankind; but if the United States felt itself bound to go to war to defend the neutrality of every neutralized state and strait, it would be in the position of the gendarme in the play written by the boys in a French lycee. The culminating incident is the benevolent gendarme discovering a poor woman on the curbstone.

"What is the matter, my unfortunate one?" he inquires. "Alas, I am so wretched. I have lost my husband, my brothers and sisters, my children. I am homeless, I am starving. I have nowhere to go." "Poor woman, what can I do for you?" says the gendarme. Thereupon a happy thought comes to him. He draws his hanger and stabs himself—you understand, to show his sympathy! A cooler-headed gendarme might have taken the poor woman into the nearest restaurant and revived her with nourishing food and drink, and then he could have rescued another unfortunate on some other day.

The United States has troubles of its own—present and impending—and may thank God that it is outside of the realm of trenches and bombs and poisonous gases. It is the duty of this country to stand solidly and continuously by the great principle that it has a sovereign, national right to stay out of a war just as much as to go into it. We cannot command the great belligerents to lay down their arms, nor can they compel us to take up arms. The United States has an unrivalled opportunity to show that personal sympathies with either side cannot push the government from its consistent duty of preventing military expeditions, or the building of warships or the enlistment of troops, within our boundaries; that it will allow no foreign ships of war to make the United States their base of operation. When the war is over,—for that date also is written in the books of the fates—the United States will have an honorable record in this respect. The difficulties of the Washington government during the Civil War, and its insistence at that time on more than common neutrality on the part of other powers, are the best examples for the present.

Meaning of Contraband

In spite of all efforts to befog the issue the United States has a body of neutral rights, to which it is the more entitled because of its care to fulfill its obligations. Those neutral rights do not depend upon treaties, or Hague conventions or the good nature of desperate antagonists. It lies in the nature of human society and the organization of states. The bottom principle in the civilized world is that peace and commercial intercourse are normal among nations; and that no two powers are required to become enemies because one of them is engaged in war. The seizure of the property of belligerents at sea has been a factor in wars for many centuries. If it is an undesirable part of war—which is far from being self-evident—nevertheless it does exist in the year 1915. No matter how ferocious the belligerents have been between themselves, how regardless of the ordinary methods of making war; still their misbehavior carries with it no right to interfere with the relations of the United States to both sides. If my neighbors right and left are engaged in a hullabaloo because the chickens of one stray into the backyard of another, and the other's dog disposes of them; why shall not my children continue to slide down the cellar door of both premises?

We seem to forget that the ships of the United States and other neutrals have the same right to sail the seas and to enter the ports of all the belligerents as though there were no war going on—subject only to the principle that neutrals must not interfere with actual military and naval operations. Mines are now the ordinary defence of seacoasts and neutrals must take every precaution against them when approaching a coast or entering a port, and an area where a sea-fight is going on is not a suitable place for merchant steamers of any kind. With those exceptions there are only two substantial limitations on neutral trade. The first of these is contraband—a term which every student of international law thought he understood until the present war. The reason for seizing contraband is simply that it is a direct participation in land and sea operations. Although by the custom of nations no government is bound to prevent the shipment of contraband, no government will protect it, once outside its ports; or make any reclamation for its capture, if it be truly contraband.

Partly through the attitude of the United States on that ques-

tion in the Civil War, the world has adopted the principle of "continuous voyages," which is in effect that a contraband cargo destined for a belligerent may be seized if on its way to a neutral port.

The crux with regard to contraband is the list of contraband articles. And here the only question is whether the cargoes do actually and directly aid the recipient to carry on hostilities. The suggestion of the English that cotton ought to be contraband because a very small proportion of the cotton shipped might be transformed into explosives is ridiculously far fetched. Copper seems to be a necessity for making of munitions, and perhaps might be added. Petrol is obviously likely under present conditions to be used in the field; but what about steel, without which guns could not be cast and automobiles could not be built? Upon this whole question of the list of contraband the State Department has been weak; for while manfully protesting against delays and exasperations in the proceedings on vessels seized on the basis of contraband, it has never formally protested against the ever expanding British list; it has never clearly applied the touchstone of actual military use to the articles held up by the British; and it has once incautiously admitted the "law of necessity" as a valid reason for altering the ordinary practices of international law.

Meaning of Blockade

In the discussions of blockade, also, there has been a hesitancy to base the position of the United States on the solid ground of the real nature of blockade. It is a common practice of war to invest a port by sea, partly to cut off its commerce, partly to prevent supplies reaching the coast—always as a positive, active military measure. The United States, during the Civil War, captured vessels anywhere on the high seas bound to the ports of the Southern Confederacy, because outside each of those ports it had a competent blockading squadron. Any vessel attempting to enter or to leave that port was therefore directly interrupting the operations then going on, and if captured was good prize.

That was the sort of blockade which it was supposed the immense British fleet would institute against the German coast, and the United States would never for a moment have questioned the capture of ships bound to actually invested ports. For reasons

best known to themselves the British have not thought it prudent to establish such forces off the coast. They do not feel physically able to keep up such a blockade. Having failed therefore in what was supposed to be its obvious method of attack, Great Britain has now declared a blockade which is not a blockade. The use of the word in the British Orders in Council is delusive. And this bitter pill is to be sugared by the declaration that neutral vessels and cargoes which may be bound to belligerent ports shall be captured and then paid for.

The American government has officially admitted to England that "the methods of modern naval warfare . . . . may make the former means of maintaining a blockade a physical impossibility." Then instead of drawing the logical deduction that if a blockade is a physical impossibility it can neither be instituted or respected, our government accepts the new kind of blockade, which is practically the closing of the English Channel and the water routes to the north of the British Islands, which had for uncounted ages been the common property of mankind. A neutral vessel entering the North Sea without the consent of Great Britain in no way interferes with British warfare. The action of the British and German governments in declaring areas on the high seas to be "military areas" or "zones of war" has no more justification than it would be to hold that the Straits of Belleisle or the channel between Key West and Cuba were no longer open for American commerce.

Protection of Neutral Rights

To protect these rights which have been so wantonly violated by two great powers is a hard matter. The United States has remonstrated in a manly and dignified tone, though at no time covering the whole ground of just complaint. In the days of the Orders in Council and Decrees, more than a century ago, we learned the stern lesson that appeals to humanity and common sense are of little weight in the midst of such passions. It has been suggested that the remaining neutral powers ought to organize as did Russia, Holland and other European powers in the famous Armed Neutrality of 1781; that they should lay down a program of their rights as neutrals, and insist that the neutrals should respect them. Such joint action would doubtless have some influence, and it would

remain on record as a counsel of perfection. Both Great Britain and Germany in this controversy have argued courteously for the absolute necessity of their behavior as a special measure intended to countervail the awful depravity of the other's action. And Great Britain on the question of the procedure of seizing vessels and prize courts promised amendment which has hardly been carried out. On the essential point, however, of capturing or destroying American merchantmen which have a right to an untroubled voyage, they are alike stubborn. Perhaps sometime a bill for damages may be presented to one or to the other offending power.

Certainly the United States could protest with vastly more effect if it had a navy of the same kind as that of Great Britain and Germany—that is, a navy including a number of fast and massive dreadnoughts, and also including a large flotilla of destroyers and of submarines, and a suitable aerial contingent. The friendship and the trade and good will of the United States are worth having, but not sufficiently so to protect our interests in a time of crisis. The neutrality of the United States has to be maintained with a slender military backing. The United States is standing up as the champion of the neutral world, and is maintaining principles which would otherwise go under. Nevertheless nine months of war have been a sufficient proof that unarmed neutrality is a steam launch in a cyclone. However sound or seaworthy, the most it can expect is to live through the storm.

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